IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4766 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

VASANTRAO LAXMANRAO KADAM

Appearance:

1. Special Civil Application No. 4766 of 2002

MR ASHISH M DAGLI for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/09/2004

ORAL JUDGEMENT

1.1 The petitioner-Corporation, by way of this petition, has challenged the judgment and award passed by

the Labour Court, Baroda, in Reference (LCV) No.1289 of 1999 whereby the Labour Court while allowing the Reference quashed the order of dismissal dated 7-5-1997 passed by the competent authority and awarded 75% of the back wages with all consequential benefits and continuity of service but also imposed punishment of one annual increment for a period of six months.

2.1 It is the case of the petitioner-Corporation that the respondent-workman was working as Art-C Mechanic with the petitioner-Corporation at Makarpura Depot, Baroda, The respondent remained absent on his duty without seeking prior approval and permission for the period from 1-9-1996 to 22-10-1996 on account of which disciplinary proceedings came to be initiated against the respondent, and ultimately the respondent was dismissed from service on the said charge. Against the order of dismissal the respondent preferred First Appeal and the same was rejected on 31-12-1997.

2.2 Thereafter, the dispute on being referred to the Labour Court, the Labour Court passed the judgment and award as stated in detail in para 1 of this judgment. It is against that judgment and award of the Labour Court that the petitioner-Corporation has approached this Court by preferring the present petition.

3.1 Mr. Dagli, learned Counsel for the petitioner submitted that the Reference was filed belatedly i.e. the respondent-workman had attained the age of superannuation on 7-5-1999 while the Reference was filed on 8-12-1999 after the retirement of the respondent, and as such, only on this sole ground the order of the Labour Court granting back wages from the date of dismissal till reaching the age of superannuation cannot be sustained. I find some force in this contention raised by Mr. Dagli, The Labour Court ought not to have entertained the Reference after the workman had attained the age of superannuation inasmuch as by then he has accepted the order of dismissal as the Reference is preferred almost two years from the order of dismissal by the competent authority.

4.1 As against that,Mr. G.K. Rathod, learned Counsel for the respondent-workman has contended that the delay in preferring the Reference has occasioned owing the the fact that the statutory appeal was preferred on 9th January, 1998 and the workman was waiting for the result of the second appeal before the statutory authority. According to him, even today the second appeal is not decided.

5.1 However,taking an overall view of the matter, I am of the opinion that even assuming that the Reference is filed after one year and eleven months from the order of dismissal by the competent authority, it will be in the interest of justice, if the order of the Labour Court is modified to the extent that the respondent workman will not be entitled to the back wages. The penalty imposed on the workman of one annual increment for a period of six months will be with future effect.

For the foregoing reasons, the petition is allowed. The order of the Labour Court awarding 75% back wages is quashed and set aside and the order stands modified to that extent only. All other directions in the judgement and award of the Labour Court shall remain intact but the penalty imposed on the respondent workman of one annual increment for a period of six months will be with future effect. The petitioner institution is directed to pay all the dues to the respondent-workman including retirement benefits treating the services rendered by him as continuous within four months from today.

(K.S.Jhaveri,J.)

stanley-ksj